

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O A No. 119 OF 2012

MONDAY, THE 4TH DAY OF MARCH, 2013/13TH PHALGUNA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRI KANT TRIPATHI, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

SMITHA PRAVEEN, AGED 31 YEARS,
WIDOW OF LATE NAIK A.PRAVEEN (ARMY NO.2598701 Y),
PUZHAKKAL HOUSE, VADAKKUMPURAM,
P.O. PERINGOTTUKURUSSI, PALAKKAD – 678574.

BY ADV. SRI. T.K. SANDEEP.

Versus

RESPONDENTS:

1. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),
PCDA (P), ALLAHABAD, U.P.
2. SECRETARY OF DEFENCE,
INTEGRATED HEADQUARTERS OF MOD (ARMY),
ARMY HEADQUARTERS, DHQ P.O.,
NEW DELHI – 110 011.
3. RECORD OFFICER, MADRAS REGIMENT ABHILEK KARYALAYA,
RECORDS, THE MADRAS REGIMENT, POST BAG NO.1,
WELLINGTON, (NILGIRIS) 643 231.
4. UNION OF INDIA, REPRESENTED BY THE SECRETARY TO
GOVERNMENT, MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI – 110 011.

BY ADV. SMT. E.V.MOLY, CENTRAL GOVT. COUNSEL.

ORDER

Shri Kant Tripathi, Member (J):

1. Heard Mr.T.K.Sandeep for the applicant and
Smt.E.V.Moly for the respondents and perused the record.

2. The applicant, Smt.Smitha Praveen, the widow of late Naik A.Praveen, No.2598701 Y, has filed the instant Original Application for a direction to the respondents to sanction her ex-gratia payment of Rs.10 lakhs.

3. The relevant facts are that, the applicant's husband, Ex.Naik A.Praveen, was enrolled in the Madras Regiment of the Indian Army on 20.2.1995. After the military training, he was posted to 5 Madras Regiment on 24.2.1996. While serving with 5 Madras Regiment, he died on 5.5.2008 in exercise area during formation level exercise. The Court of Inquiry proceedings dated 14.8.2008 found that cause of death of aforesaid Naik Praveen was attributable to military service as he was sleeping after completion of his part of training programme while the battalion was deployed in formation level exercise in general area at VIII Talwarh, District Una, Himachal Pradesh, which is like no man's land area, where poisonous snakes and other creatures were found. Accordingly, the applicant was sanctioned Special Family Pension. However, her claim for ex-gratia payment of Rs.10 lakhs in accordance with the terms and conditions provided by the Government of India,

Ministry of Defence Letter No.20 (1)/98/D (Pay/Service) dated 21.10.2008 (hereinafter referred to as 'Government Letter dated 21.10.2008') was denied by the Principal Controller of Defence Accounts (Pension), Allahabad. According to the said letter, a sum of Rs.10 lakhs is payable as ex-gratia lumpsum compensation to the next of kin of the deceased Defence personnel if his death occurs in accidents in the course of duties. The letters of the PCDA (P) rejecting the applicant's claim for ex-gratia compensation of Rs.10 lakhs is on record as Exts.R5 and R7. The letter (Ext.R5) dated 8.4.2011 of the PCDA (P) Allahabad discloses the reason for denial of ex-gratia payment to the applicant. According to that letter, the death of the applicant's husband did not fall within the purview of the Government Letter dated 21.10.2008 as the individual was not actually performing the bonafide military duty at the time of death. The PCDA (P) by the subsequent letter dated 7.9.2011 (Ext.R7) had informed the applicant that the death of the individual was due to snakebite. The PCDA (P) further informed the applicant that the basic condition to be satisfied as stipulated in the Government Letter dated 21.10.2008 was that there should be a casual connection between the death

and actual performance of bonafide military duty, which was not existing in the matter of the death of applicant's husband. So, she was denied ex-gratia payment.

4. It is also relevant to mention that certain official correspondence had taken place in the matter. Letter No.2598701/FP/146/PG-2 dated 6th January, 2009 was sent by the Records of the Madras Regiment to the PCDA (P), Allahabad. In that letter (Annexure A4), a reference of the conclusion of the Court of Inquiry and other facts had been made, which is reproduced as follows:

"1.Refer to your letter No.G/11/08/59/VIII/G - 1000208 dated 25 Nov 08.

2. No.2598701 Y, Naik A.Praveen of this Regiment (5 MADRAS) died on 05 May 2008 in Military Exercise Area, while the battalion was deployed for Formation level exercise in general area at VIII Talwarh, Distt Una (HP). On 05 May 2008, the individual was sleeping in a tent alongwith the other personnel of his battalion, on completion of part of exercise programme, he got up suddenly and complained to his buddy that a rat like creature has bitten him. On spotting blood drops at the time location, individual was evacuated to unit Regiment Aid Post (RAP). On examination, his condition was found deteriorated, he was immediately evacuated to 78 Infantry Brigade Advance Dressing Station (ADS) and from there to Field Surgical Centre (FSC) established by 329 Field Ambulance. After having examined by medical officer, individual was declared as brought in dead due to 'Snake Bite'.

3. As per directions of Commander, 78 Infantry Brigade, on C of I proceedings dated 14 Jun 08, the cause of death of the individual is attributable to

military service as the individual was sleeping after completion of his part of training programme while the battalion was deployed in Formation level exercise in general area at VIII Talwarh, Distt Una (HP), which is like no man's land area, where poisonous snakes and other creatures are found. As such, your contention that the individual died while sleeping and not on bonafide military duty seems to be not justifiable.

4. In view of the above, you are requested to reperuse the case and sanction special family pension and Ex-gratia compensation from Central Govt to widow of the deceased. Sheet rolland other supporting documents are re-submitted herewith. In case special family pension cannot be sanctioned, please sanction ordinary family pension and issue necessary rejection memo, so that the widow can prefer her appeal to Govt. of India."

5. In addition to the aforesaid letter dated 6th January, 2009, the Record Office of the Madras Regiment had sent another letter dated 26th February 2009 (Annexure A5) to the PCDA (P), Allahabad, relevant portion whereof is reproduced as follows:

"2. No.2598701 Y Nk. A Praveen of this Regiment died on 05 May 2008 due to Sanke bite while on bonafide military duty while the battalion was deployed in general exercise (Electric Warfare training). As per directions of Commander, 78 Infantry Brigade on C of I proceedings dated 14 Jun 2008, cause of death of the individual is attributable to military service as he was on bonafide Military duty. As such your contention that the individual died due to snake bite while sleeping instead of in the performance of duty as defined in para 12 of entitlement rules is not justified.

3. Though the whole battalion is deployed on specific duty, the limited pers are detailed to carry out Night duty at various vital points in rotation. In the instant case, the deceased was thus in stand by position taking rest in his rolling bed after performing the duty, awaiting for his next turn of duty. In this connection, it is submitted that personnel detailed on duty cannot be engaged in one go and they do carry out one after other as per timing fixed.

Therefore, the accidental death of this particular individual should not be treated as "death occurred while sleeping". You are therefore requested to re-peruse the case and sanction special family pension and ex-gratia compensation to the NOK of the deceased."

6. The Record Office of the Madras Regiment had again taken up the case with PCDA (P) vide letter (Ext.R4) No.2598701 dated 04 March 2011, which is reproduced as follows:

"1. Refer your letter No.Gr/VIII/Madras Regt/MISC - 2598701/09 dated 11 May 2009, IHQ MOD (Army) letter No.B/38046/76/09/AG/PS-4 (Imp I) dated 20 Apr 2010 and your PPO F/011433/2010.

2. No.2598701 Y, Naik A Praveen died on 05 May 2008 due to snake bit while on bonafide Military duty while the battalion was deployed in general exercise (Electric Warfare training). The claim for special family pension and Ex-gratia compensation from Central Govt have been rejected vide your letter under reference. However, cause of death of the individual has been accepted as attributable to Military service by IHQ of MOD letter quoted above and special family pension has been sanctioned to the widow vide your PPO quoted above. Since the individual died due to snake bite on bonafide Military duty, i.e. while Electric Warfare training, the case is also covered under Govt of India, Ministry of Defence letter No.20(1)/98/D(Pay/Services) for grant of Ex-Gratia compensation from Central Govt As such the following documents are forwarded herewith for grant of ex-gratia compensation to the widow of the deceased.

.... .."

7. The above request of the Record Office of the Madras Regiment vide the letter dated 4th March, 2011 (Ext.R4), was turned down by the PCDA (P) vide letter (Ext.R5) dated 8th April 2011 stating that the death of applicant's husband did not fall within the purview of Government of India, Ministry of Defence Letter No.20(1)/98/D/(Pay/Ser) dated 21.10.2008 as the individual was not actually performing the bonafide Military duty at the time of death.

8. In our view, the stand of the PCDA (P) Allahabad does not appear to be correct in law. The applicant's husband was, according to the finding of the Court of Inquiry, deployed in formation level exercise in the exercise area at VIII Talwarh, District Una, Himachal Pradesh. He had performed his part of the training programme while the battalion in which he had been posted was there in connection with the aforesaid training programme. It was not permissible for the applicant's husband to leave the place. To put it otherwise, he had to remain there even after completion of his part of training, therefore, the view of the PCDA(P) that he was sleeping and was not on duty at the time of the incident, does not appear to be correct. In our view, there was a casual connection between the duty of

the applicant's husband and his death. Had he not been deployed there for the aforesaid training programme, he would not have died due to snakebite, especially when he was not permitted to leave the place and had to stay there. Para 271 of the Defence Service Regulation, 1987 very clearly provides that all P T and exercise and other activities detailed therein are considered as part of duty. If any individual sustains injury while doing P T and exercise, it is to be treated to have occurred while on duty. The provisions of the Para 271 of the aforesaid Regulations being relevant on the point is reproduced as follows:

“271. PT and Games: All PT and exercises, including PT games, carried out as part of a soldier's training during parade hours under a PT instructor or a platoon or company commander are compulsory. Games and sports out of parade hours are not compulsory, but if organised by or with the approval of military authorities will be regarded as PT. Injuries sustained by officers, JCOs, WOs and OR including Ncs(E) taking part in such parades, games and sports, or deaths arising from these injuries will be considered to have occurred while on duty.”

9. Even according to the Government Letter dated 21.10.2008, ex gratia lumpsum compensation of Rs.10 lakhs to the next of kin of deceased Defence personnel is payable in the matter of his death occurring due to accidents in the course of duties. The death of the applicant's husband while on duty is

fully covered by the aforesaid Government Letter. It is also significant to mention that the Integrated Headquarters of the Ministry of Defence (Army) had issued a letter dated 20th April 2010 (Ext.R2) to the P.C.D.A.(P), Allahabad conveying that the President was pleased to decide that the death of late Naik A.Praveen should be regarded as attributable to military service, but surprisingly, the P C D A (P), Allahabad, who was not the appropriate authority to decide the question of attributability, overruled the opinion of the President without any justification.

10. In view of the aforesaid, we are of the view that the death of the applicant's husband took place while on duty in the exercise area, which was attributable to military service, therefore, the lumpsum ex-gratia compensation of Rs.10 lakhs claimed by the applicant was liable to be allowed, but was wrongly denied by the respondents.

11. Accordingly, the Original Application is allowed. The respondents are directed to sanction and pay the lumpsum ex-gratia compensation of Rs.10 lakhs to the applicant within

four months from the date of receipt of a copy of this order, failing which the unpaid amount will carry a simple interest at 8% per annum to be paid by the respondents to the applicant.

12. There will be no order as to costs.

13. Issue free copy of this order to both side.

Sd/-
LT. GEN. THOMAS MATHEW,
MEMBER (A)

Sd/-
JUSTICE SHRI KANT TRIPATHI,
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary